No. 10-677

IN THE

Supreme Court of the United States

CALVIN DAVID FOX,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION

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RESTATEMENT OF QUESTIONS PRESENTED

Whether the May 27, 2010 order of the Florida Supreme Court denying Calvin David Fox's "Verified Petition to Vacate Ongoing Daily, Temporary Suspension for Lawfully Refusing to Comply with Subpoena, Nunc Pro Tunc," and the Florida Supreme Court's August 10, 2010 order denying Mr. Fox's subsequent motion for rehearing, decided an important federal question in a way that conflicts with the decision of another state court of last resort, a federal court of appeal, or with a relevant decision of this Court.

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STATEMENT OF THE CASE

Introduction

Calvin David Fox (the "Petitioner") alleges that the Florida Supreme Court orders in question are the result of a "vendetta" against him by "rogue [Florida Bar] prosecutors" who "routinely provided secret propaganda and memoranda on how to prosecute" Petitioner to the Referee[1] and who engaged in the "secret interrogation" of his client. Yet, the Petitioner fails to provide any record cites or any other documentation to credibly support these allegations. Moreover, the Petitioner omits crucial facts from his petition.

The Petitioner was suspended by The Florida Supreme Court from the practice of law by order dated November 24, 1999, for failure to comply with a subpoena issued by a grievance committee of The Florida Bar pertaining to the Petitioner's trust account. (App. 1a-2a). The Florida Supreme Court's order specifies that the Petitioner's suspension shall continue until such time as he complies with the subpoena. (App. 1a). Despite representations in the petition to the contrary, the Petitioner has never complied with the subpoena.

Also, the Petitioner's suspension from the practice of law has already been the subject of two proceedings before the Florida Supreme Court, a federal court case in which the Eleventh Circuit Court of Appeals wrote an opinion affirming the district court's dismissal of the Petitioner's

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1. A referee is a judge or retired judge who is appointed by the Florida Supreme Court to conduct lawyer disciplinary proceedings. R. Regulating Fla. Bar 3-2.1(l).

case, and two prior petitions for a writ of certiorari to this Court, both of which were denied.

The relevant facts pertaining to this matter, and its procedural history, are set forth in greater detail below.

Relevant Facts and Procedural History

In 1996, a complaint was filed by Jon Serbin with The Florida Bar alleging that funds in the Petitioner's trust account had not been properly disbursed to a client of the Petitioner, Linda Serbin, despite requests to do so. As a result of that complaint, a grievance committee of The Florida Bar issued a subpoena on September 22, 1997. (App. 3a-5a). The subpoena required the production of bank statements, canceled checks, check stubs, deposit slips, receipt and disbursement journals, client ledger cards, and bank and client reconciliations for trust accounts for the time period May 1, 1993 until the date of the subpoena. (App. 5a). The subpoena required the documents to be produced by October 13, 1997. The Petitioner objected to the subpoena stating that it would require the disclosure of confidences of his client. (App. 8a-9a, 11a).

Petitioner's client, Linda Serbin, testified before the grievance committee on January 20, 1998, that the Petitioner had not disbursed funds to her which belonged to her. (App. 14a-17a). Subsequently, in June 1998, Linda Serbin by affidavit joined in Jon Serbin's complaint against the Petitioner. (App. 18a-19a). Thereafter, on August 14, 1998, pursuant to procedures set forth in the Rules Regulating The Florida Bar, a Referee heard the issue of noncompliance. (App. 20a). At the hearing, the Petitioner represented and stated multiple times that in light of Ms.

Serbin's testimony and affidavit, he would produce the documents requested by the subpoena by August 28, 1998. (App. 21a-25a). However, the Petitioner did not produce the documents. Therefore, on September 4, 1998, the Referee issued a finding of no good cause for the non-compliance and recommended to the Florida Supreme Court that the Petitioner be suspended until such time as he was in compliance with the subpoena.[2] (App. 26a-28a).

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2. The hearing on noncompliance and subsequent suspension by the Florida Supreme Court were conducted in accordance with the procedure set forth in former Rule 5-1.2(f), Rules Regulating The Florida Bar. At the time of the Petitioner's initial suspension, Rule 5-1.2(f) provided in pertinent part that:

> Notice of noncompliance with a subpoena may be filed with the Supreme Court of Florida only if a grievance committee or a referee shall first find that no good cause exists for failure to comply. A grievance committee or referee shall hear the issue of noncompliance and issue findings thereon within 30 days of the request for issuance of the notice of noncompliance.
>
> After notice is filed with the Supreme Court of Florida, by The Florida Bar, that a member of the bar has failed to fully comply with a properly issued subpoena directing the production of any trust accounting records which are required by these rules, unless good cause for the failure to comply is shown, the member may be suspended from the practice of law in Florida, by order of the Supreme Court of Florida, until such time as the member fully complies with the subpoena and/or until further order of the court.

R. Regulating Fla. Bar 5-1.2(f)(2) and (3) (1997); *The Florida Bar Re Amendments to Rules Regulating The Florida Bar,* 697 So. 2d 115, 133 (Fla. 1997).

The Petitioner's noncompliance with the subpoena continued. Therefore, on December 1, 1998, The Florida Bar grievance committee issued a subpoena to Commercebank for the Petitioner's trust account documents. (App. 29a-31a). Documents were then produced by Commercebank to The Florida Bar for the period of May 28, 1993, the date on which the trust account was opened, to April 24, 1995, the date on which the account was closed.

Meanwhile, the Petitioner appealed the Referee's finding of noncompliance and recommendation of suspension to the Florida Supreme Court, and the issue was fully briefed. *The Florida Bar v. Calvin D. Fox,* Case No. 92,484.[3] On November 24, 1999, the Florida Supreme Court issued an order approving the recommendation of the Referee and suspending the Petitioner from the practice of law until such time as he is in compliance with the subpoena. (App. 1a-2a). The Court further added that the suspension would not go into effect if the Petitioner complied with the subpoena within 30 days from the filing of the order. (App. 2a). The Petitioner did not comply, and the suspension went into effect.

Following a full hearing, and after review of the documents pertaining to the Petitioner's trust account that were produced to The Florida Bar by Commercebank, the grievance committee issued a finding of no probable cause on March 14, 2000 in the Serbin matter. (App. 32a-33a). Subsequently, the Petitioner filed a petition for a writ of

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A similar procedure is now codified at Rule 5-1.2(g) and Rule 3-7.11(d) and (f), Rules Regulating The Florida Bar.

3. See online docket at http://jweb.flcourts.org/pls/docket/ds_docket_search%20

certiorari with this Court seeking review of the Florida Supreme Court's order of suspension. *Fox v. The Florida Bar,* United States Supreme Court Case No. 99-1887. The Court denied the petition on October 2, 2000. (App. 40a).

A review by the Bar's auditor of the Petitioner's trust account records that were produced by Commercebank raised several other questions with regard to the Petitioner's trust account. In 2002, in response to an inquiry from the Petitioner pertaining to his continued suspension, John Anthony Boggs, the Director of the Legal Division of The Florida Bar, reminded the Petitioner of the other issues surrounding his trust account, that the Bar had never received any records for Petitioner's trust account for the time period after April 1995, and that it remained the obligation of the Petitioner to keep and produce trust account records. (App. 34a-39a). The Petitioner still failed to produce the trust account records requested by the subpoena.

In 2004, the Petitioner filed an action in federal court challenging his suspension alleging a violation of his due process rights under the Florida and federal constitutions. *See Fox v. Florida,* 138 Fed. Appx. 194 (11th Cir. 2005). The Petitioner requested declaratory and injunctive relief quashing the disciplinary proceedings and reinstating Petitioner's license to practice law as well as damages. *Id.* The district court granted The Florida Bar's motion to dismiss and the Petitioner appealed. *Id.* The Eleventh Circuit Court of Appeal affirmed the dismissal on the basis of the *Rooker-Feldman* doctrine. *Id.* The Petitioner then filed a petition for a writ of certiorari with this Court, which was denied. *Fox v. The State of Florida,* United States Supreme Court Case No. 05-651.

In 2008, the Petitioner filed his "Verified Petition to Vacate Ongoing Daily, Temporary Suspension for Lawfully Refusing to Comply with Subpoena, Nunc Pro Tunc" with the Florida Supreme Court.[4] *Fox v. The Florida Bar*, Florida Supreme Court Case No. SC08-1328. The Bar responded that the Petitioner remained in noncompliance with the subpoena issued on September 22, 1997, and had yet to make a showing of good cause excusing his noncompliance. (App. 41a-44a). On May 27, 2010, the Florida Supreme Court dismissed the Petitioner's petition. (App. 45a-46a). The Petitioner filed a motion for rehearing that was denied by the Florida Supreme Court on August 19, 2010 (App. 47a-48a).

The Petitioner has now petitioned this Court for the third time for a writ of certiorari, this time alleging that the May 27, 2010 and August 19, 2010 orders of the Florida Supreme Court are in conflict with the laws of other states and with precedent of this Court. More specifically, the Petitioner alleges that:

(1) The orders as they pertain to Petitioner's suspension and Rule 3-7.11(d)(7)(B), Rules Regulating The Florida Bar (formerly codified as Rule 5-1.2(f)(1)) -- providing that members of the Bar, as a condition of practicing law in Florida, may not assert any privilege personal to the lawyer to the production of trust account records in any disciplinary proceeding -- are in conflict with the laws of other states and with *Spevack v. Klein*, 385 U.S. 511 (1967), and are otherwise a violation of Petition's right to due process.

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4. Such petition is contained in the Appendix to the Petition for Writ of Certiorari in this matter at A4-46.

(2) The Florida Bar's attorney disciplinary system allows the Bar to act as "prosecutor, judge and jury" and therefore the Florida Supreme Court orders are in conflict with *Goldstein v. Commission on Practice of Supreme Court*, 995 P.2d 923 (Mont. 2000), *In re Schlesinger*, 172 A.2d 835 (Pa. 1961), and with *In Re Murchison*, 349 U.S. 133 (1955).

(3) The orders allow prosecutorial misconduct in conflict with *United States v. Berger*, 295 U.S. 78 (1935)

REASONS FOR DENYING THE PETITION

I. THE FLORIDA SUPREME COURT'S ORDERS AT ISSUE DID NOT DECIDE AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT OF LAST RESORT, A FEDERAL COURT OF APPEAL, OR WITH A RELEVANT DECISION OF THIS COURT.

Pursuant to Supreme Court Rule 10, to invoke the jurisdiction of this Court, the Petitioner should show that the Florida Supreme Court orders he challenges are in conflict with a state court of last resort, a federal court of appeals, or a decision of this Court. This he has not done.

A. The Florida Supreme Court Orders Denying Petitioner's Motion to Vacate His Suspension are Not in Conflict with *Spevack v. Klein* and Do Not Otherwise Violate Petitioner's Right to Due Process

In Florida:

> Members of the bar are under an obligation to maintain trust accounting records as required by these rules and, as a condition of the privilege of practicing law in Florida, may not assert any privilege personal to the lawyer that may be applicable to production of same in these disciplinary proceedings.

R. Regulating Fla. Bar 5-1.2(f)(1) (1997) (now codified as R. Regulating Fla. Bar 3-7.11(d)(7)(B)). Petitioner refers

to this rule as the "no defense" rule in his Petition and argues that the Florida Supreme Court orders entered in light of this rule are in conflict with *Spevack v. Klein*, 385 U.S. 511 (1967).[5]

In *Spevack*, the Court reviewed a matter where an attorney refused to produce financial records demanded by a subpoena duces tecum and refused to testify in his disciplinary proceeding on the basis that the production of documents and testimony would tend to incriminate him. 385 U.S. 512-13. The lower court had ordered the attorney disbarred, holding that the Fifth Amendment privilege against self-incrimination was not available to him in attorney disciplinary proceedings. *Id.* at 513. On review, this Court found that the disbarment could not be affirmed on the ground that the privilege was not applicable to the attorney. *Id.* at 518. The Court found that Fifth Amendment protection against self-incrimination extended to lawyers, and that it "should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it." *Id.* at 514. Thus, it is clear from the Court's holding in *Spevack* that an attorney may not be disbarred simply for asserting the Fifth Amendment privilege.

The Court in *Spevack* expressly refused to consider the applicability of the "required records" doctrine enunciated in *Shapiro v. United States*, 335 U.S. 1 (1948). *Spevack*, 385 U.S. at 517. In *Shapiro*, the Court held that

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5. While the Petitioner generally asserts that the rule conflicts with rules in other states, he does not specifically cite to any such rules. Nor does he cite to any precedent from other states on this issue.

records required to be kept by law are public records outside the scope of the Fifth Amendment privilege. 335 U.S. at 17-19. Referring to *Shapiro* in his concurring opinion in *Spevack*, Justice Fortas stated:

> If this case presented the question whether a lawyer might be disbarred for refusal to keep or to produce, upon properly authorized and particularized demand, records which the lawyer was lawfully and properly required to keep by the State as a proper part of its functions in relation to him as licensor of his high calling, I should feel compelled to vote to affirm . . . .

Spevack, 385 U.S. at 520. *See also Baltimore City Dep't of Social Servs. v. Bouknight*, 493 U.S. 549, 556 (1990) (discussing *Shapiro* and recognizing that the Fifth Amendment could not be invoked to resist compliance with a regulatory scheme constructed to effect the State's public purposes unrelated to the enforcement of criminal laws).

A lawyer's trust account records have long been recognized in Florida as having a public aspect relating to the protection of clients and to the fitness of a member of The Florida Bar to practice law. *See The Florida Bar v. White*, 384 So. 2d 1266, 1267 (Fla. 1980). Therefore, a Florida lawyer's trust fund records are within the required records exception set forth in *Shapiro*, and reiterated in *Bouknight*, to the privilege against self-incrimination. *See id. See also State of Oklahoma Bar Ass'n v. Gasaway*, 863 P.2d 1189 (Okla. 1993); *Louisiana State Bar Ass'n v. Chatelain*, 513 So. 2d 1178 (La. 1987); *In re Kenney*, 504

N.E.2d 652 (Mass. 1987); *Unnamed Attorney v. Attorney Grievance Comm'n of Maryland*, 708 A.2d 667 (Md. Ct. App. 1998), *cert. denied*, 525 U.S. 874 (1998).

In any event, here, there are no criminal proceedings at issue. And the Petitioner has never alleged that the documents sought would deprive him of his Fifth Amendment right against self-incrimination. The Petitioner has only complained that the production of documents would violate the attorney-client privilege. *See, e.g.*, Petition for Writ of Certiorari at pp. iii, 31-33. This argument has no basis.

It is generally considered as a matter of law that bank records of an attorney client trust account are not the type of documents protected by the attorney-client privilege. *See, e.g., Reiserer v. United States*, 479 F.3d 1160, 1165 (9th Cir. 2007); *In re Grand Jury Subpoena*, 831 F.2d 225, 228 (11th Cir. 1987); *Gannet v. First Nat'l State Bank*, 546 F.2d 1072, 1075-76 (3d Cir. 1976), *cert. denied*, 431 U.S. 954 (1977); *Securities and Exchange Comm'n v. First Security Bank of Utah*, 447 F.2d 166, 167 (10th Cir. 1971), *cert. denied*, 404 U.S. 1038 (1972); *O'Donnell v. Sullivan*, 364 F.2d 43, 44 (1st Cir.), *cert. denied*, 385 U.S. 969 (1966); *Sunshine Behavioral Health Servs., Inc.*, 2009 WL 1850310 at *3 (M.D. Fla. 2009); *United States v. Bank of California*, 424 F. Supp. 220, 225 (N.D. Cal. 1976); *Doyle v. State Bar of California*, 648 P.2d 942, 946-47 (Cal. 1982); *Neely v. Commission for Lawyer Discipline*, 302 S.W.3d 331, 341 (Tex. Ct. App. 2009); *State v. Clark*, 630 So. 2d 493, 497 (Ala. Crim. App. 1993).

Moreover, in Florida, the attorney-client privilege must be claimed by, or on behalf of, the client. Fla. Stat.

§ 90.502(3) (2010). Here, any attorney client privilege claimed by the Petitioner's client, Linda Serbin, was effectively waived when she joined in the Bar complaint against Petitioner. This waiver was acknowledged by the Petitioner in correspondence to the Bar, and again at the hearing on noncompliance. (App. 22a-24a).

Furthermore, the Petitioner has never been disbarred. He has been suspended from the practice of law for the noncompliance with a subpoena after a hearing on the matter and after continued and ample opportunity to avert the suspension. Petitioner's noncompliance is in its thirteenth year, and he has consistently failed to demonstrate any reason or good cause for such continued noncompliance. While the Serbin complaint matter was closed by a finding of no probable cause, there are other issues with Petitioner's trust account that remain unresolved, and in any case, it does not excuse his disobedience of the lawful court order. As the Petitioner has been advised, he holds the "keys to the resolution of [his] dilemma." (App. 38a).

The Petitioner cannot show any conflict with *Spevack* or that he otherwise asserted a valid privilege to the subpoena of his trust account records.

B. The Florida Bar Has Not Improperly Acted as "Prosecutor, Judge and Jury" so as to Deny Petitioner Due Process

The Petitioner alleges that the Florida attorney disciplinary system improperly allows The Florida Bar to act as "prosecutor, judge and jury." Therefore, the Petitioner argues that this Court's decision in *In re*

Murchison, 349 U.S. 133 (1955), the Montana Supreme Court's decision in *Goldstein v. Commission on Practice of Supreme Court*, 995 P.2d 923 (Mont. 2000), *cert. denied*, 531 U.S. 918 (2000), and the Pennsylvania Supreme Court's decision in *In re Schlesinger* 172 A.2d 835 (Pa. 1961), require a finding that he has been denied due process. However, these decisions do not warrant such a finding.

In *In re Murchison*, this Court reviewed a matter in which a state judge acted as a "one-man grand jury" and compelled witnesses to testify before him in secret about possible crimes. 349 U.S. at 134-35. The judge had charged two witnesses with criminal contempt, one for perjury and the other for refusing to answer certain questions and then tried them himself, and convicted and sentenced them for contempt. 349 U.S. at 135. The Court found that the trial before the judge who was the complainant, indicter and prosecutor constituted a denial of the fair and impartial trial required by the due process clause. *Id.*

Subsequently, this Court reviewed the constitutionality of a state's administrative disciplinary system for physicians which combined investigatory and adjudicatory functions. *Withrow v. Larkin*, 421 U.S. 35 (1975). The Court found that the system was constitutional noting that bias in a decision maker is not presumed and must be proven, and that:

> [T]he case law, both federal and state, generally rejects the idea that the combination (of) judging (and) investigation functions is a denial of due process . . . . Similarly, our cases, although they reflect the substance of the problem, offer no support for the bald proposition applied

> in this case . . . that agency members who participate in an investigation are disqualified from adjudicating. The incredible variety of administrative mechanisms in this country will not yield to any single organizing principle.

Id. at 52. Significantly, the Court went on to state:

> Plainly enough, *Murchison* has not been understood to stand for the broad rule that the members of an administrative agency may not investigate the facts, institute proceedings, and then make the necessary adjudications. The Court did not purport to question . . . the Administrative Procedure Act and did not lay down any general principle that a judge before whom an alleged contempt is committed may not bring and preside over the ensuing contempt proceedings. The accepted rule is to the contrary.

Id. at 53. The Court went on to note that while the special facts and circumstances of a case in which investigatory and adjudicatory functions are combined may justify a conclusion that the risk of unfairness is intolerably high in that particular case, the processes utilized by the medical examining board at issue did not in themselves contain an unacceptable risk of bias. *Id.* at 54-55, 58. The Court upheld the constitutionality of the disciplinary system. *Id.* at 59.

Likewise, in the case cited by the Petitioner, *Goldstein v. Commission on Practice of Supreme Court*, the Montana Supreme Court cited *Withrow* and found that

the procedures followed by the eleven-person Commission on Practice of the Montana Supreme Court did not violate an attorney's due process rights even though both investigatory and initial adjudicatory functions were vested in the Commission. 995 P.2d at 927-28.[6] The court pointed out that the Commission was appointed by the Montana Supreme Court and made recommendations to the court regarding discipline, but that the Montana Supreme Court retained the sole responsibility for final adjudication of ethical violations. *Id.* at 925-27.

In *In re Schlesinger*, also cited by the Petitioner, the Pennsylvania Supreme Court held that an attorney was deprived of due process by a disbarment order where the functions of prosecutor, judge and jury, were combined in a single committee. 172 A.2d at 597. However, subsequently, the same court reviewed a matter where the state dental board had suspended a dentist's license. *State Dental Council and Examining Bd. v. Pollock*, 318 A.2d 910 (Pa. 1974). The court found that there was no due process violation in the administrative structure employed where the prosecutory and judicial functions were adequately separated. *Id.* at 915. The court distinguished *Schlesinger* and *Murchison* in which cases the same individuals actually participated in both the prosecutory and judicial roles. *Id.*

Here, in the performance of its disciplinary functions, The Florida Bar acts as an official arm of the Florida Supreme Court. *See* Ch. 1 Introduction, R. Regulating

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6. In his Petition for Writ of Certiorari at pp. 21-22, the Petitioner quotes from the dissenting opinion in *Goldstein*, rather than from the majority opinion.

Fla. Bar; *Carroll v. Gross*, 984 F.2d 392 (11th Cir.), *cert. denied*, 510 U.S. 893 (1993). However, the investigatory, prosecutorial and adjudicatory roles in the disciplinary process are not conducted by the same individuals. Bar staff handles investigatory and prosecutorial functions, R. Regulating Fla. Bar 3-7.3, but grievance committees are made up of private attorneys and individuals. R. Regulating Fla. Bar 3-3.4. Grievance committees also have an investigatory role as well as an adjudicatory role in as much as they make the findings of probable cause or no probable cause. R. Regulating Fla. Bar 3-7.4. Referees, who are judges or retired judges from the state court system, act in an adjudicatory role by conducting the disciplinary proceedings and making recommendations to the Florida Supreme Court. R. Regulating Fla. Bar 3-7.6. And it is the Florida Supreme Court that retains the sole responsibility for the final adjudication of all lawyer ethical violations. R. Regulating Fla. Bar 3-7.7. At bottom, the investigatory, prosecutorial and adjudicatory functions in the Florida lawyer disciplinary system are adequately divided so as not to contain an unacceptable risk of bias. Hence, the Florida Bar disciplinary system does not run afoul of *Murichson*, and is not in conflict with *Goldstein* or *Schlesinger*.

C. The Record is Devoid of Evidence of Prosecutorial Misconduct

The Petitioner maintains that the orders issued in this matter are in conflict with *United States v. Berger*, 295 U.S. 78 (1935). In *Berger*, a criminal case, this Court found that the prosecuting attorney:

> [o]verstepped the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense is clearly shown by the record. He was guilty of misstating the facts in his cross-examination of witnesses; of putting into the mouths of such witnesses things which they had not said; of suggesting by his questions that statements had been made to him personally out of court, in respect of which no proof was offered; of pretending to understand that a witness had said something which he had not said and persistently cross-examining the witness upon that basis; of assuming prejudicial facts not in evidence; of bullying and arguing with witnesses; and, in general, of conducting himself in a thoroughly indecorous and improper manner.
>
> ***
>
> In these circumstances prejudice to the cause of the accused is so highly probable that we are not justified in assuming its nonexistence.... we have not here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential.

295 U.S. at 84, 89.

In the case at bar, the Petitioner makes allegations of a "vendetta" against him by "rogue [Bar] prosecutors" who "routinely provided secret propaganda and memoranda on how to prosecute" Petitioner to the Referee and who engaged in the "secret interrogation" of his client. Petition for Writ of Certiorari at 9, 15, 31. However, the Petitioner presents no document, transcript, or other credible evidence, to support his allegations. Petitioner only asserts that the alleged vendetta is a result of his testimony as the former prosecutor in a death penalty case in proceedings to stay the death penalty. *Id.* at 9. His reasoning is that "lawyers employed by the state are like law enforcement officers -- they close ranks against those who appear to stand against them." *Id.* at A35. Indeed, Petitioner offers only speculative conclusions to support his allegations. He has alleged no specific factual allegations indicating that an employee or officer of The Florida Bar was acting outside the scope of their official duties or with bad faith in this matter. The record presented to the Court reflects that the conduct of The Florida Bar and its agents is consistent with the good faith performance of their official disciplinary functions.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

BARRY RICHARD
Counsel of Record
M. HOPE KEATING
GREENBERG TRAURIG, P.A.
101 East College Avenue
Tallahassee, Florida 32302
(850) 222-6891
richardb@gtlaw.com

APPENDIX

APPENDIX A — ORDER OF THE FLORIDA SUPREME COURT, DATED NOVEMBER 24, 1999 IN CASE NO. 92,484

SUPREME COURT OF FLORIDA

CASE NO. 92,484

WEDNESDAY, NOVEMBER 24, 1999

THE FLORIDA BAR,

Complainant,

vs.

CALVIN D. FOX,

Respondent.

After review of the report of the referee and the briefs submitted by both the Florida Bar and Respondent, we hereby approve the recommendation of the referee and suspend the Respondent from the practice of law until such time as he is in compliance with the Grievance Committee subpoena of September 22, 1997. This suspension shall be effective 30 days from the filing of this order so that Respondent can close out his practice and protect the interests of existing clients. If Respondent notifies this Court in writing that he is no longer practicing and does not need the 30 days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall accept no new business from the date this order is filed.

Appendix A

The suspension shall not go into effect if Respondent satisfactorily complies with the subpoena within the 30 day period. Satisfactory compliance with the subpoena shall be stated in a notification to the referee by the Florida Bar. If the suspension becomes effective, it shall continue until such time as notice of compliance is made by the Florida Bar. Any dispute as to whether compliance is satisfactory shall be determined by the referee.

Respondent's Motion to Strike Record and Motion to Discharge Notice of Noncompliance are hereby denied.

Not final until time expires to file motion for rehearing and, if filed, determined. *The filing of a motion for rehearing shall not alter the effective date of this suspension.*

A True
TEST:

/s/_____
Debbie Causseaux
Acting Clerk, Supreme Court

KBB

cc: Hon. Paul Siegel, Referee
Mr. Billy Jack Hendrix
Mr. Gregg D. Wenzel
Mr. Calvin David Fox

APPENDIX B — SUBPOENA TO CALVIN D. FOX DATED SEPTEMBER 22, 1997 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

Witness Subpoena *Duces Tecum*

The Florida Bar File No. 97-70,300 (11I)

THE FLORIDA BAR,

Complainant,

vs.

CALVIN D. FOX

Respondent.

To: Calvin D. Fox
Tutor-Time - Suite 450
One Park Place
Boca Raton, Florida

YOU ARE HEREBY COMMANDED to appear before Carlos Ruga, Staff Auditor of the Miami Office of The Florida Bar, duly appointed pursuant to the Rules Regulating The Florida Bar at 444 Brickell Avenue, Suite M-100, Miami, Florida 33131 on the 13th day of October, 1997 at 10:00 am o'clock to testify in the above entitled proceeding, and to produce and bring with you at that time:

Appendix B

See addendum.

For failure to appear and testify as herein required, you will be deemed to be in contempt of the Supreme Court of Florida.

Dated this 22nd day of September 1997.

RETURN OF SERVICE
I CERTIFY that the foregoing subpoena was served this __ day of _____199___by

_____
(method of service)
Signature and Title of Person Making Service

THE FLORIDA BAR

/s/_____
LAWRENCE N. FRESHMAN, Chair
Eleventh Judicial Grievance Committee 11"I"

Appendix B

ADDENDUM TO SUBPOENA
CALVIN D. FOX, 97-70,300(11I)

The original bank statements, canceled checks, check stubs, deposit slips, receipt and disbursement journals, client ledger cards, bank and client reconciliations for any trust accounts wherein you have signatory capacity for the period of May 1, 1993 to the present.

APPENDIX C — MOTION FOR A PROTECTIVE ORDER DATED OCTOBER 13, 1997 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

IN THE SUPREME COURT OF FLORIDA

[BEFORE A GRIEVANCE COMMITTEE]

CASE NO. 97,70, 300(11I)

THE FLORIDA BAR, by and
throught the complaint of Jon Serbin,

Complainant,

vs.

CALVIN DAVID FOX,

Respondent.

RESPONSE; REQUEST FOR ADDITIONAL TIME; MOTION FOR CLARIFICATION; MOTION FOR A PROTECTIVE ORDER NOTICE OF MAILING ADDRESS; AGREEMENT TO ACCEPT PROCESS

TO: LAWRENCE N. FRESHMAN
Chair, 11th Cir. Judicial Circuit
Grievance Committee "I"

COMES NOW, the Respondent, CALVIN DAVID FOX, and submits this Response; Request for Additional Time; Motion for Clarification; Motion for a Protective Order; and Notice of Mailing Address; Agreement for Process, to wit:

Appendix C

1.) That the undersigned is in receipt of a subpoena *duces tecum* served in the above referenced case at the offices of a client of the undersigned, in which the undersigned has been directed to provide financial records. ***Exhibit A***. Below stated is the correct mailing address and telephone number for the undersigned.

I.

2.) First of all, said subpoena was *improperly served* with the announcement that it was from the Florida Bar at the offices of a client of the .undersigned in order to cause maximum injury and embarrassment of the undersigned with his client, in this supposedly confidential matter.

3.) That the undersigned would respond to any subpoena of the Florida Bar for any matters by simply signing for the subpoena, which has worked just fine for all matters in which anyone has ever desired to serve the undersigned for any matter during the past twenty-two (22) years.

II.

4.) That the undersigned has been extremely ill for the past thirty days apparently arising from the effects of a mass in his lower left abdomen.

5.) That because of the foregoing and the intervening religious holidays, of Roshashana and Yom Kippur, the undersigned has been unable to address this matter.

6.) That the undersigned has been required to work and travel 70 to 80 hours a week for his principal corporate clients in critical and emergency and Court ordered proceedings, including mediation, hearing and injunctive relief in three cases in the U.S. District Courts in Illinois and Indiana; and the Superior Court for the State of New Jersey; and arbitration matters in Washington state and Florida for the past thirty days.

7.) That the undersigned has closed out all of his non-corporate clients, with the exception of the *Riteway* matter and one other case in which no trust funds have been required.

8.) That because of the foregoing and the matters recited herein, together with the daily business of the administration of the offices of the undersigned, he would request an additional thirty (30) days in which to respond to the -present subpoena.

III.

9.) That the only complaint ever forwarded to the undersigned in this cause is an undated complaint by Jon Serbin, which was apparently received by the Miami office of the Florida Bar on September 4, 1996. ***Exhibit B***. For the reasons repeatedly expressed to Ms. Linda Evans, the undersigned has been unable to respond to said complaint, because of his ethical obligation to Linda Serbin and Bess Serbin to maintain their privacy.

10.) That the only client the undersigned has ever represented at all times material to Jon Serbin's complaint

was his estranged wife, Linda Serbin. ***Composite Exhibit C.***

11.) That, Ms. Linda Serbin related to the undersigned on May 7, 1997, that she gave an interview to an investigator from the Miami office of the Florida Bar in April 1996. Ms. Linda Serbin, reported to the undersigned that she told the investigator that she did not wish to proceed with any complaint against the undersigned; that she had no complaint with the undersigned; that the money Jon Serbin was complaining about was never Jon Serbin's money; that she did not wish the undersigned to respond to the complaint and disclose matters very private to herself and Bess Serbin; and that she, Linda Serbin, would sign off on a closure of the complaint in this case.

12.) That on May 7, 1997, Ms. Serbin also agreed to forward the attached draft letter to the Florida Bar, after the undersigned was able to secure certain claims of Linda Serbin in the ongoing ***Riteway*** litigation, which have just been concluded during the past ten (10) days. ***Exhibit D.*** Ms. Serbin and the undersigned were unable to conclude this matter during the past Yom Kippur holiday, because of Ms. Serbin's busy schedule.

13.) That this committee has no probable cause to require the invasion of all clients' records, without any complaint from Linda Serbin, who was the only client of the undersigned in the underlying litigation, in ***First Union National Bank v. Linda Serbin***, 11th Cir. Case 92-13147-CA-24, which resulted in a settlement with the Plaintiff by closing and sale to avoid foreclosure and is the sole basis of the complaint by Jon Serbin.

Appendix C

14.) That the undersigned has no financial records of Jon Serbin, who at all times relevant to the complaint was not the client of the undersigned and had no claim to the funds he has related in the above referenced complaint.

15.) That the undersigned is confused and unable to respond to paragraph 1 of the subpoena he is in receipt of, in that Linda Serbin has made no complaint herein and in response to said subpoena would state that there are no joint financial records for the, "Serbin's money" in the possession or control of the undersigned and there has never been any fund, which he or anyone else designated as "the Serbin's money" and that he is in possession of no moneys belonging at any time to Jon Serbin.

IV.

16.) That this Committee has no jurisdiction to consider this matter, where a previous Committee of the 11th Circuit considered and rejected the efforts of Ms. Elena Evans to cause this matter to proceed within the meaning and intent of ***Mabie v. Garden Street Management Company***, 397 So.2d 920 (Fla. 1981) and its progeny.

17.) That this Committee has no jurisdiction to consider this matter, where a previous Committee of the 17th Circuit considered and rejected the efforts of Ms. Elena Evans to cause this matter to proceed within the meaning and intent of ***Mabie v. Garden Street Management Company***, 397 So.2d 920 (Fla. 1981) and its progeny.

Appendix C

V.

18.) That the undersigned is confused and unable to respond to paragraph 2 of the subpoena in that it seems to be vague and overbroad in that it seems to request all records for any client, for who or for which the undersigned has ever maintained records since May 1, 1993, although the complaint in this cause is only by Jon Serbin, who was not his client.

19.) That the undersigned is in good faith responding to the "11I" committee with the foregoing reservations and is willing to respond further if required to do so, but would request clarification of the foregoing matters and more definite statement of whose records and what records the committee is seeking and what the basis for that claim is.

20.) That the undersigned hereby adopts all those responses and requests previously filed regarding his desire to maintain the confidences of and privacy of his clients, Linda Serbin and Bess Serbin.

21.) That in any event if the privacy and confidences of Linda Serbin and Bess Serbin must be revealed the undersigned would first request that these matters be revealed ***in camera*** to avoid harm to Linda Serbin and Bess Serbin, the ***only*** clients of the undersigned.

22.) That because of the erroneous "transfer" of this matter to the 17th Circuit and then the return of this cause to the 11th Circuit the undersigned would demand that

this cause proceed in the fashion required by the Florida Bar procedures, including but not limited to a response to the request for the undersigned for clarification and explanation to Ms. Evans at the very inception of this matter; and disclosure of the identity of the members of the 11I committee, which may be considering this cause.

WHEREFORE, upon the foregoing the undersigned would request that the Committee or the Court protect against the discovery sought; and/or quash the subpoena served on the undersigned; and cause this file to be closed; and\or that this Committee will further investigate the ***ultra vires*** act of Elena Evans in causing this matter to be removed from the jurisdiction of the Florida Bar "11I" committee and if said "11I" committee or the "17I" Committee is found to have considered this cause and declined to proceed that this Committee will cause this matter to be dismissed for lack of jurisidiction under the present cause, where the previous Florida Bar 11I Committee(s) declined to proceed as required by ***Mabie v. Garden Street Management Company***, 397 So. 2d 920 (Fla. 1981) and its progeny and/or that the present Committee would cause a clarified subpoena to be written and the foregoing matters addressed and clarified and thereupon the undersigned will appear and sign for said subpoena.

Appendix C

LAW OFFICES of
CALVIN DAVID FOX
P.O. Box 5286
Fort Lauderdale, Florida 33310
(305) 839-5035

/s/_____
CALVIN DAVID FOX, Esq.
Florida Bar No. 192098

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Response; Motion for Clarification; Motion for a Protective Order; and Notice of Address was caused to be handdelivered on October 13, 1997 to LAWRENCE N. FRESHMAN, Chairman, Eleventh Judicial Circuit Grievance Committee "I" care of The Florida Bar, Suite M-100, 444 Brickell Avenue, Miami, Florida 33131; and Carlos Ruga, Suite M-100, 444 Brickell Avenue, Miami, Florida 33131; and Jon Serbin, Apartment 7, 9241 Collins Avenue, Surfside, Florida 33154.

/s/_____
CALVIN DAVID FOX, Esq.

APPENDIX D — EXCERPTS FROM TRANSCRIPT OF HEARING HELD JANUARY 20, 1998 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

[1] IN THE SUPREME COURT OF FLORIDA
BEFORE A GRIEVANCE COMMITTEE

CASE NO. 97-70, 300 (11I)

THE FLORIDA BAR,

Complainant,

vs.

CALVIN D. FOX,

Respondent.

Record of proceedings had and testimony taken before a Grievance Committee at the Offices of the Florida Bar, 444 Brickell Avenue, Miami, Florida 33131, on Tuesday, January 20, 1998, at a session commencing at 6:05 p.m., pursuant to notice.

* * *

[5] give in these proceedings will be the truth, the whole truth and nothing but the truth?

MS. SERBIN: I do.

MS. EVANS: Ms. Serbin, in this matter, did you hire Mr. Fox at any time?

MS. SERBIN: I can't say hire. I can say that he volunteered to help.

MS. EVANS: Is it your position that you have asked Mr. Fox for an accounting of any funds that he may have recovered on your behalf?

MS. SERBIN: I asked him to return the deposit that he was holding.

MS. EVANS: Has he returned any funds to you?

MS. SERBIN: Not to date.

MS. EVANS: Has he given you an accounting of those funds?

MS. SERBIN: No, he hasn't. He did give some of the money that he was holding in the beginning.

MS. EVANS: Do you know how much he is holding?

MS. SERBIN: I believe in the beginning, he gave $7,000 and maybe another $1,000 [6] after that.

MS. EVANS: Do you have any idea how much more you are due?

MS. SERBIN: He had $25,000 to begin with.

MS. EVANS: Does anybody else have any other questions of Ms. Serbin?

MR. FRESHMAN: Yes.

This is Mr. Freshman again.

The $25,000, was there ever an attorney fee involved in that $25,000? Was it your understanding that he was to receive a fee from that $25,000?

MS. SERBIN: No.

MR. FRESHMAN: What was your understanding of why he was holding the $25,000 for you, ma'am?

MS. SERBIN: At the time, he just thought it was best that he hold it in his account.

MR. FRESHMAN: How long ago was that?

MS. SERBIN: That was when we sold the house. I believe that was in 1992.

You have to ask Jon. I think it was in the spring of 1992.

[7] MR. FRESHMAN: When did you ask him for the money back?

MS. SERBIN: I have been asking him all along for the money back.

MR. FRESHMAN: Let's start with the spring of 1992. When would have been the first time that you asked him for your money back?

MS. SERBIN: That is how we got the $7,000 to begin with, because we needed money to move. At that time, he gave us the $7,000.

MR. FRESHMAN: When he gave you the $7,000 and did not give you the $25,000 that he was holding for you, what conversation did you have with him?

MS. SERBIN: He said that the money is safe with him and whenever I wanted it, I could get it.

MR. FRESHMAN: Was there some reason why he felt that you weren't old enough or wise enough to take the full $25,000?

MS. SERBIN: No.

MR. FRESHMAN: Did you ever give him the feeling that you wanted him to hold it in

* * * *

APPENDIX E — AFFIDAVIT OF LINDA SERBIN DATED JUNE 6, 1998 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF DADE

Before me, the undersigned authority, on this 6th day of June, 1998, personally appeared *Linda A. Serbin*, who being duly sworn, deposes and says the following:

1. I, Linda Adelman Serbin, join my husband in the complaint, *The Florida Bar File No. 97-70,300(11I),* against Calvin Fox.

2. My husband, Jon Serbin, brought a complaint against Calvin Fox and I am in total agreement with him on that matter.

3. Mr. Fox is holding an escrow account for me in the amount of $18,000.

4. Mr. Fox has been holding that money for a period of five years.

5. At this time, I have requested these funds and he is unwilling to release them.

6. I have never given Mr. Fox my consent or permission to keep these funds.

Appendix E

7. This money is the deposit of a real estate sale that did not materialize.

FURTHER AFFIANT SAYETH NAUGHT.

/s/_____
LINDA A. SERBIN, Affiant

SWORN TO AND SUBSCRIBED before me by *Linda A. Serbin* who is personally known to me or produced Florida Driver's License as identification on this 6th day of June, 1998.

/s/_____
NOTARY PUBLIC
State of Florida at Large

My Commission Expires:

APPENDIX F — EXCERPTS FROM TRANSCRIPT OF HEARING HELD AUGUST 14, 1998 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

[1] IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

FLORIDA BAR CASE NO. 97-70,300 (11L)

THE FLORIDA BAR,

Complainant,

vs.

CALVIN D. FOX,

Respondent.

Proceedings had before Judge Paul Siegel, sitting as Referee, at 1351 Northwest 12th Street, Miami, Florida, on August 14, 1998, commencing at 2:05 o'clock p.m., pursuant to Notice.

* * *

[4] would admit noncompliance with production of the records, which is what this case has been sent to the Court for.

MR. WENZEL: Specifically, that being trust account records from May, 1993.

MR. FOX: The subject matter of the two subpoenas.

Appendix F

May records, May, '93 to date.

The reasons for that, Your Honor, are in the record, but I would agree to produce those records by August 28th.

When those documents that I have are produced, I guess the Court or the Bar would dismiss this case and you would recommend to the Supreme Court that the case has been resolved or they would file a dismissal or something like that?

MR. WENZEL: Well, we wouldn't agree to that, but what we would agree to is not to pursue the noncompliance of the subpoena or any type of discipline as a result of that like a suspension because you didn't comply with the subpoena originally.

MR. FOX: Right, but the Supreme Court needs to know what's happening with the case.

[5] MR. WENZEL: What we would like is that he have a date and we would like for you to determine if that date could be a little — we would request that date to be less than the 28th, perhaps by next Friday that he produce these records that are required in these two subpoenas and if he doesn't, that's he immediately suspended until he does produce those records.

THE REFEREE: Well, you folks either have an agreement or you don't.

MR. WENZEL: That's correct, and I —

Appendix F

THE REFEREE: It sounds like thus far, you don't have any agreement.

MR. FOX: The only agreement —

THE REFEREE: You're close, but you're not there yet.

MR. FOX: The only thing we didn't agree to, Judge, is a few minutes ago, Mr. Wenzel suggested this Friday and I suggested the 28th.

Now, the reason as far as the 28th goes, I have a mass in my abdomen which they are going to do a study of on Monday and decide whether to take it out and I think -- you [6] know, I need a little bit of time to recover from that.

I would like to produce the records because quite frankly, I didn't produce the records because I was not present at the hearing on the 20th because I thought Mrs. Serbin was not making a complaint against me and now she —

THE REFEREE: Well, let me make a suggestion then since I have listened to the two of you.

Let me suggest if it is acceptable to both sides that if on Monday, Mr. Fox, you are scheduled for surgery immediately, that the date for compliance with the subpoena will be August 28th, and if you find out that you are not going to be scheduled immediately for surgery, then the date for compliance will be the 21st.

Is that acceptable to you?

MR. WENZEL: That's acceptable.

MR. FOX: I think I could do that, Judge. If they say you know they are not going to do the surgery next week, that would be —

THE REFEREE: Yes, I can understand.

* * *

[12] THE REFEREE: Well, we're here right now.

Let me read Rule 5-1.2 on trust accounting records and procedures, which says:

"Note: Sub-section two. Notice of noncompliance with a subpoena may be filed with the Supreme Court of Florida only if a Grievance Committee or a Referee shall first find that no good cause exists for failure to comply."

I think today is the day for any showing of good cause. So if you have any good cause for failure to comply with the subpoena, Mr. Fox, you need to tell me what it is right now.

If you don't, then my finding will be that there is not good cause for failure to comply with the subpoena, which I understand you're agreeing to comply with right now.

MR. FOX: I agreed to comply with it in front of — if you read the transcript of January 20th, 1998, I sent the committee a letter agreeing to comply after I received

a document which appeared to be a complaint by Mrs. Serbin.

I sent them a letter and then I went to my trial in Washington state and agreed to [13] comply.

THE REFEREE: Okay. Mr. Fox, do you have any good cause for failing to comply with the subpoena that you want to present to me right now?

I mean, not failing to comply in the past. Do you have any good cause for which you are not going to comply with the subpoena by the time agreed upon a few moments ago, either August 21st, 1998 or August 28th, 1998?

MR. FOX: I will produce the documents which I have relative to the subpoena, Judge.

THE REFEREE: Well, Mr. Fox, it sounds like a bit of a hedge —

MR. FOX: Judge, if there is a period at the end of a sentence that I'm missing somewhere, you know —

THE REFEREE: No. What you said was, "I will produce the records that I have."

MR. FOX: I will produce the financial records with regard to Serbin, and I'll produce the financial records with regard to those transactions since May of '93.

THE REFEREE: Well, whatever the subpoena calls for —

Appendix F

* * *

[15] have a clear record.

Mr. Fox, by August 21st or August 28th, depending upon whether or not he is scheduled next week for surgery, will produce all records which are called for by the subpoena.

If Mr. Fox does not comply with the subpoena — I have not heard any good cause today for a failure to comply — and I will file my report that may be drafted by Bar counsel, which is called for under the rule that I just quoted.

MS. SANKEL: Your Honor, when we submit a proposed report of Referee, may we include in there that you recommend that Mr. Fox remain suspended if he fails to produce those records until such time as he then complies? Because I believe that the Supreme Court will be looking to you for a recommendation along those lines.

THE REFEREE: Well —

MR. FOX: I think that's up to the Supreme Court.

MS. SANKEL: It's up to them whether or not to come with that recommendation —

THE REFEREE: Well, I don't find the

* * * *

APPENDIX G — FINDINGS AND RECOMMENDATIONS OF THE REFEREE DATED SEPTEMBER 4, 1998, IN THE SUPREME COURT OF FLORIDA, CASE NO. 92,484

IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

Supreme Court Case No. 92,484

The Florida Bar File
No. 98-71,093(11I)

THE FLORIDA BAR,

Complainant,

v.

CALVIN DAVID FOX,

Respondent.

FINDINGS AND RECOMMENDATIONS

THIS CAUSE having come before this referee on The Florida Bar's Notice of Noncompliance with a Grievance Committee Subpoena and The Florida Bar's Status Report on Respondent's Non-Compliance and the referee having heard from the parties and being otherwise duly advised in the premises, this referee hereby makes the following findings and recommendations:

Appendix G

FINDINGS:

1. No good cause has been shown for respondent's non-compliance with production of all records set forth in that Grievance Committee subpoena dated September 22, 1997, a copy of which is attached hereto.

2. The respondent, Calvin D. Fox, had agreed to provide all records set forth in the Grievance Committee subpoena dated September 22, 1997 and was ordered in open court to produce the records set forth in the referenced subpoena. (See transcript of proceedings of August 14, 1998.)

3. The respondent had stated in open court that he would produce all records required under the subpoena to The Florida Bar no later than August 28, 1998.

4. This referee has been advised by counsel for The Florida Bar that respondent has failed to produce the subpoenaed records and further, that respondent has requested yet additional time for production.

RECOMMENDATION:

As respondent has failed to provide those records required pursuant to that grievance committee subpoena dated September 22, 1997, it is the recommendation of this referee that respondent be suspended until such time as he is in compliance with the Grievance Committee subpoena of September 22, 1997.

Appendix G

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 4th day of Sept., 1998.

/s/
Honorable Paul Siegel, Referee
Richard E. Gerstein Justice Bldg.
1351 N.W. 12th Street, Room 300
Miami, Florida 33125

copies furnished to:
Gregg D. Wenzel, Bar Counsel
Calvin D. Fox, Respondent

APPENDIX H — SUBPOENA TO COMMERCEBANK DATED DECEMBER 1, 1998 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

Witness Subpoena Duces Tecum

The Florida Bar File No.
97-70,300 (11I)

THE FLORIDA BAR,

Complainant,

vs.

CALVIN D. FOX,

Respondent.

To: RECORDS CUSTODIAN
Commercebank
220 Alhambra Circle
Coral Gables, Florida

YOU ARE HEREBY COMMANDED to appear before Carlos Ruga, Staff Auditor of the Miami Office of The Florida Bar, duly appointed pursuant to the Rules Regulating The Florida Bar at 444 Brickell Avenue, Suite M-100, Miami, Florida 33131 on the 15th day of December 1998 at 10:00 am to testify in the above entitled proceeding, and to produce and bring with you at that time:

Appendix H

SEE ATTACHMENT

For failure to appear and testify as herein required, you will be deemed to be in contempt of the Supreme Court of Florida.

Dated this 1st day of December, 1998.

RETURN OF SERVICE

I CERTIFY that the foregoing
subpoena was served this 3
day of December 1998, by
/s/ Personal to Julio Garcia
(method of service) at 2199 Ponce

_____
Signature and Title of Person
Making Service

THE FLORIDA BAR

/s/_____
LAWRENCE N. FRESHMAN, Chair
Eleventh Judicial Grievance Committee "I"
9130 So. Dadeland Boulevard
Suite 1701
Miami, Florida 33156

Appendix H

ATTACHMENT TO SUBPOENA DUCES TECUM
CALVIN D. FOX
THE FLORIDA BAR FILE NO. 97-70,300(11I)

Bank statements, canceled checks, items deposited with its corresponding deposit slips, wire transfers, cashier's checks issued with supporting documentation, any debits or credits posted to any and all accounts in which Calvin D. Fox has signatory capacity, for the period of May of 1993 to the present.

Please provide first a copy of the bank statement for the month of June 1993, of each and every account that Calvin D. Fox had in the bank and we will advise you of what other records we will need after that.

In lieu of appearance you can mail the records to the attention of Carlos J. Ruga, Staff Auditor, The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131. If you have any questions please call Mr. Ruga at (305) 377-4445.

APPENDIX I — GRIEVANCE COMMITTEE'S REPORT OF NO PROBABLE CAUSE DATED MARCH 14, 2000 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

File No. 97-70,3000(11I)

THE FLORIDA BAR,

Complaintant,

vs.

CALVIN D. FOX,

Respondent.

REPORT OF NO PROBABLE CAUSE

The [E]leventh Judicial Circuit Grievance Committee "I" found No Probable Cause in the above-referenced matter.

Pursuant to the provisions of Rule 3-7.4(j) of the Rules Regulating the Florida Bar, the undersigned by signature, signifies a finding of No Probable Cause by the Grievance Committee as to the referenced complaint.

Dated this 14th day of March 2000.

Appendix I

THOMAS M KARR, Chair
Eleventh Judicial Circuit
Grievance Committee "I"

cc. Arlene Kalish Sankel
Branch Staff Counsel
Calvin D. Fox, Respondent,
Jon & Linda Serbin, Complaintants.

APPENDIX J — LETTER FROM JOHN ANTHONY BOGGS TO CALVIN DAVID FOX, DATED JANUARY 29, 2002, CONTAINED IN EXHIBIT N TO PETITIONER'S APPENDIX TO PETITION TO VACATE TEMPORARY SUSPENSION IN FLORIDA SUPREME COURT CASE SC08-1328

IN THE SUPREME COURT OF FLORIDA

Case N0. SC08-1328
Formerly Case No. 92,484

CALVIN DAVID FOX,

Petitioner/Respondent,

THE FLORIDA BAR,

Respondent/Complaintant.

PETITIONER'S APPENDIX TO PETITION TO VACATE TEMPORARY SUSPENSION

CALVIN DAVID FOX
Florida Bar No. 192098
Post Office Box 7900
Jupiter, Florida 33468
(954) 383-5943

Appendix J

TABLE OF CONTENTS

Document	Exhibit
Notice of Hearing upon Jon Serbin Complaint; November 24, 1999 Order of Supreme Court and February 22, 2000 Order denying Rehearing etc.	A
Report of No Probably Cause of 11th Circuit Grievance Committee and letter to Serbin	B
Calvin David Fox, Vitae	F
Petitioner's Verified Motion to Disqualify Referee Siegel Fla. S.Ct. Case 92,484, August 12, 1998	G
Linda Serbin Contract and Closing Statement November 23, 1992 and August 4, 1993	H
Petitioner's Letter to Gregg Wenzel, copy to Boggs, July 20, 1998.	I
Petitioner's Letter to Florida Bar President-Elect, Todd Aronovitz, January 16, 2001	J
Petitioner's Letter to John A. Boggs Director Florida Bar Legal Division, December 4, 2001	K
Petitioner's Letter to President of Florida Bar, Todd Aronovitz, June 5, 2003	L

Appendix J

Petitioner's Letter to Chairman of Special Commission On Lawyer Regulation, April 15, 2004 ..... M

John A. Boggs Letter of January 29,2002; and John A. Boggs's Letter of April 28, 2994 Reply to Petitioner's April 15, 2004 Letter to Commission on Lawyer Regulation ..... N

John A. Boggs Letter of January 29, 2002; John A. Boggs's Letter of April 28, 2994..... N

The Sun-Sentinel, "Convictions and Conscience Remain On Trial: Fox Says Stewart May Not be the Murder" July 26, 1990, p. 1e and 7e ..... O

Fox, C., "Review of Death Penalty Literature: Why it Should be Abolished----The Execution of Roy Allen Stewart" EDD 9200 "Trends and Issues" (Spring 2008) ..... P

"Affidavit of Randy Mumper and Index, Fox v. Chiles, Fla S.Ct. Case 78,906; Fox For Judge Flyers, November 4, 1988; Gelber resignation, July 31, 1991; "Judge bragged he could fix cases," The Miami Herald November 13, 1991 p. 1a ..... Q

Appendix J

EXHIBIT N

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

THE FLORIDA BAR
650 Apalachee Parkway
Tallahassee, FL 32399-2300

January 29, 2002

850/561-5600
www.FLABAR.ORG

Mr. Calvin David Fox
Post Office Box 5286
Fort Lauderdale, Florida 33310-5286

Re: Continuing Suspension for Noncompliance With Grievance Committee Subpoena

Dear Mr. Fox: Please pardon the delay in responding to your inquiry. I have reviewed the files, including your Petition for Writ of Certiorari to the United States Supreme Court as they relate to your suspension and the subsequent dismissal of the Serbin complaint by the grievance committee. I have also conferred with bar counsel regarding their impressions and recollections.

It is true that the initial spark behind the matters relating to the suspension was the complaint of Jon Serbin

(later joined in by his ex-wife, your client). However, the issues presented in that complaint are not the only issues for which the grievance committee issued its subpoena. Examples of other issues that we have been unable to resolve due to lack of records are checks cashed out of the trust account without adequate reference to determine if appropriate; instances of funds coming into the trust account without any subsequent disbursement to the client and verification of whether they were entitled to any disbursements; some checks deposited to the trust account made payable to you and clients, but not endorsed by clients; and no trust records for any account after April 1995.

We are reviewing what we know of your trust accounting compliance and will advise you further regarding what we believe you need to accomplish before we may consider the issue of your continuing suspension. I cannot commit to a particular resolution at this time. Please keep in mind that it was, and is, your obligation to keep and produce trust records when required to do so. In this respect you hold the "keys" to resolution of your dilemma.

On another topic, I noticed the only address you have on file with the bar is the post office box referenced in this letter. Please review rule 1-3.3, R. Regulating Fla. Bar, as it relates to the requirement of designating a physical street address.

Thank you.

Sincerely,

/s/
John Anthony Boggs
Director, Legal Division

cc: Arlene K. Sankel
Barry W. Rigby
John F. Harkness, Jr.

APPENDIX K — ORDER OF THE SUPREME COURT OF THE UNITED STATES IN CASE NO. 99-1887

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 29543

October 2, 2000

Mr. Gregg D. Wenzel
Suite M-100
444 Brickell Avenue
Miami, FL 33126

Re: Calvin David Fox
v. Florida Bar
No. 99-1887

Dear Mr. Wenzel:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/
William K. Suter, Clerk

APPENDIX L — THE FLORIDA BAR'S RESPONSE IN OPPOSITION TO RESPONDENT'S PETITION TO VACATE HIS SUSPENSION FOR NONCOMPLIANCE WITH A GRIEVANCE COMMITTEE SUBPOENA IN FLORIDA SUPREME COURT CASE NO. SC08-1328

IN THE SUPREME COURT OF FLORIDA

Supreme Court Case
No. SC08-1328

The Florida Bar File
No. 2009-50,075(11I)

THE FLORIDA BAR,

Complainant,

vs.

CALVIN DAVID FOX,

Respondent.

THE FLORIDA BAR'S RESPONSE IN OPPOSITION TO RESPONDENT'S PETITION TO VACATE HIS SUSPENSION FOR NONCOMPLIANCE WITH A GRIEVANCE COMMITTEE SUBPOENA

COMES NOW The Florida Bar, by and through its undersigned attorney, and files this Response in Opposition to Respondent's Petition to Vacate His Suspension For

Appendix L

Noncompliance With a Grievance Committee Subpoena, and states as follows:

1. On November 24, 1999, respondent was suspended by this Honorable Court as a result of his failure to comply with a grievance committee subpoena dated September 22, 1997. This Court's order specifies that respondent's suspension shall continue until such time as notice of respondent's compliance is made by The Florida Bar. (A copy of the Order dated November 24, 1999 is attached as Exhibit "A".) Respondent has never complied with that subpoena.

2. Moreover, this Court's Order was entered following the rendering of Findings and Recommendations by the Honorable Paul Siegel, Referee, and an appeal by respondent from those Findings and Recommendations. (A copy of Judge Siegel's Findings and Recommendations are attached as Exhibit "B".)

3. Respondent has been in noncompliance with a properly issued grievance committee subpoena since September, 1999. He has failed to make a showing of good cause excusing his noncompliance to the then grievance committee chair, to the referee, or to this Honorable Court. The mere passage of time is no defense.

Wherefore, The Florida Bar respectfully requests the entry of an Order denying respondent's petition.[1]

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1. Most recently, respondent has filed a Verified Motion to Strike Notice of Appearance and Disqualify Arlene Sankel, bar counsel in this cause. The Florida Bar will respond to said motion if directed to do so by this Honorable Court.

Appendix L

/s/_____
ARLENE KALISH SANKEL
Bar Counsel
Florida Bar No. 272981
The Florida Bar
444 Brickell Avenue
Suite M-100
Miami, Florida 33131
(305) 377-4445

Appendix L

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing The Florida Bar's Response in Opposition to Respondent's Petition to Vacate his Suspension for Noncompliance with a Grievance Committee Subpoena was mailed to the Honorable **Thomas D.** Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399, and a true and correct copy was mailed to **Calvin David** Fox, Respondent, Post Office Box 7900,

Jupiter, Florida 33468, and to **Kenneth L. Marvin**, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, on this 27th day of August, 2008.

/s/_____
ARLENE KALISH SANKEL
Bar Counsel

APPENDIX M— ORDERS OF THE SUPREME COURT OF FLORIDA IN CASE NO. SC08-1328

THE SUPREME COURT OF FLORIDA

Case No.: SC08-1328
Lower Tribunal No(s).: 2009-50,075(11I)

THURSDAY, MAY 27, 2010

THE FLORIDA BAR

Petitioner(s)

vs.

CALVIN DAVID FOX

Respondent(s)

Respondent's "Verified Petition to Vacate Ongoing Daily, Temporary Suspension for Lawfully Refusing to Comply with Subpoena, Nunc Pro Tunc" is hereby dismissed.

All other pending motions and requests for relief are hereby denied.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy
Test:

Appendix M

/s/_____
Thomas D. Hall
Clerk, Supreme Court

bhp

Served:

KENNETH LAWRENCE MARVIN
ARLENE KALISH SANKEL
CALVIN DAVID FOX

Appendix M

SUPREME COURT OF FLORIDA

CASE NO.: SC08-1328
Florida Bar File No.: 2009-50,075(11I)

THURSDAY, AUGUST 19, 2010

THE FLORIDA BAR

Petitioner(s)

vs.

CALVIN DAVID FOX

Respondent(s)

Respondent's Motion for Rehearing is hereby denied. *See* Fla. R. App. P. 9.330.

The "Lower Tribunal No." in the style of the order dated May 27, 2010, refers to The Florida Bar File Number assigned to this proceeding.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy
Test:

Appendix M

/s/_____
Thomas D. Hall
Clerk, Supreme Court

bhp

Served:

KENNETH LAWRENCE MARVIN
ARLENE KALISH SANKEL
CALVIN DAVID FOX